

SERVED: September 22, 2015

NTSB Order No. EA- 5756

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 22nd day of September, 2015

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-19598
v.	)	
	)	
GREGORY WILCOX,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montaña, issued April 11, 2014, following a hearing.<sup>1</sup> In his decision, the chief law judge affirmed the Administrator's order suspending respondent's airline transport pilot certificate and any other certificates respondent holds for a period of 90 days. The chief law judge determined

---

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

respondent violated 14 C.F.R. §§ 91.123(a)<sup>2</sup> and 91.13(a),<sup>3</sup> by deviating from an air traffic control (ATC) clearance. Because we hold the Administrator failed to comply with section 2(b)(5) of the Pilot's Bill of Rights (PBR),<sup>4</sup> we grant respondent's appeal, reverse the chief law judge's initial decision, and dismiss the Administrator's complaint without prejudice.<sup>5</sup>

*A. The Administrator's Order*

Respondent operated a Piper PA-32-300 (N530SA), as pilot-in-command, at Fort Lauderdale Executive Airport (FXE) on April 15, 2013. The Administrator's order, issued December 23, 2013, alleges ATC cleared respondent to taxi to Runway 13, and respondent correctly read back the instruction to do so. ATC did not clear respondent to cross or enter Runway 13; however, respondent crossed the hold short bars for Runway 13, causing ATC to cancel the takeoff clearance of another aircraft departing Runway 13. As a result, the Administrator alleged respondent violated 14 C.F.R. §§ 91.123(a) and 91.13(a).

*B. Facts*

Consistent with its procedure for non-emergency cases and in accordance with its statutory obligation, the Administrator preceded the issuance of its order with a notice of proposed certificate action (NOPCA), which the Administrator issued on August 27, 2013. On the same day the Administrator issued the NOPCA, the Federal Aviation Administration (FAA)

---

<sup>2</sup> Section 91.123(a) states, in part, as follows: "[w]hen an ATC clearance has been obtained, no pilot in command may deviate from that clearance unless an amended clearance is obtained, an emergency exists, or the deviation is in response to a traffic alert and collision avoidance system resolution advisory."

<sup>3</sup> Section 91.13(a) prohibits operation of "an aircraft in a careless or reckless manner so as to endanger the life or property of another."

<sup>4</sup> Pub. L. 112-153, 126 Stat. 1159 (August 3, 2012).

<sup>5</sup> We do not address the merits of the Administrator's order, except to provide context.

also provided the air traffic data to respondent, who had requested it on April 25, 2013 pursuant to the PBR. Following the Administrator's issuance of the order of suspension and the respondent's appeal of the Administrator's order, the chief law judge conducted a hearing, at which air traffic controllers from ground control and local control, as well as respondent, testified.<sup>6</sup>

*C. Chief Law Judge's Oral Initial Decision*

At the conclusion of the hearing, the chief law judge found the Administrator proved both violations of 14 C.F.R. §§ 91.123(a) and 91.13(a). The chief judge found the testimony established that, on April 15, 2013, while taxiing from the run-up area to Runway 13, respondent crossed the hold short bars for Runway 13 without a clearance to enter the runway.<sup>7</sup> In addressing respondent's argument that ATC erred in failing to issue a timely "hold short" instruction, the chief law judge stated, "[t]he air traffic controllers have not been shown to be to blame in this matter for [r]espondent's violations."<sup>8</sup> The chief law judge also stated he found the testimony of the Administrator's witnesses credible.

In addition, the chief law judge summarized respondent's procedural arguments, which were based on provisions in the PBR. Specifically, respondent argued ATC erred in not informing him of his rights under the PBR at the time they notified respondent of his deviation from ATC instructions.<sup>9</sup> Respondent also asserted the PBR prohibits the Administrator from

---

<sup>6</sup> Ground Control at FXE is responsible for coordinating taxi traffic. Tr. 19. Local Control at FXE is responsible for coordinating use of the runways and issuing takeoff clearances. Tr. 68.

<sup>7</sup> Initial decision at 233-34; see also Tr. 25, 27.

<sup>8</sup> Initial decision at 245.

<sup>9</sup> After cancelling the takeoff clearance for another aircraft, air traffic controller Jeffrey Page instructed respondent to call the ATC tower to discuss the suspected deviation. Initial decision at

proceeding against an individual who is the subject of an investigation during the 30-day period beginning on the date on which the Administrator makes air traffic data available to a respondent. Respondent contended the FAA provided him with the air traffic data on August 27, 2013, at the same time the Administrator issued its NOPCA. As a result, respondent asserted the FAA did not adhere to section 2(b)(4) of the PBR concerning the availability of air traffic data, because section 2(b)(5) required the agency to provide the ATC data to him at least 30 days prior to issuing the NOPCA. In light of this, respondent maintained the PBR precludes the issuance of both items simultaneously.

The chief law judge disagreed with respondent's assertions concerning the PBR. The chief law judge found the PBR did not require ATC notify respondent, either orally or in writing, of the rights respondent had under the PBR, because the act of ATC informing a respondent of a possible deviation does not constitute the commencement of an enforcement action, as the PBR contemplates. In addition, the chief law judge found the Administrator did not officially take action against respondent until the Administrator issued its Order of Suspension on December 23, 2013. Because December 23, 2013 was more than 30 days after the FAA's provision of the air traffic data on August 27, 2013, the chief law judge determined the Administrator did not violate the PBR.

#### *D. Issues on Appeal*

On appeal, respondent presents three main issues. First, respondent contends the chief law judge erred in finding respondent violated 14 C.F.R. §§ 91.123(a) and 91.13(a) when the ATC-issued clearance did not contain a hold short instruction. Second, respondent reiterates the

---

(..continued)

219. However, the record does not contain testimony regarding the content of the conversation in which respondent engaged when he called the tower.

arguments he asserted to the chief law judge concerning the PBR. Respondent argues the chief law judge erred in finding no violation of the PBR occurred when the Administrator failed to notify him of his rights under the PBR before or during conversations with FAA controllers. Finally, respondent alleges the chief law judge erred in finding the Administrator did not violate the PBR when the Administrator issued the NOPCA on the same day he provided respondent with the air traffic data.<sup>10</sup> In accordance with our Rules of Practice,<sup>11</sup> we granted leave to accept a brief in *amicus* from the Aircraft Owners and Pilots Association (AOPA) regarding the application of the PBR.

## **2. Decision**

On appeal, we review the chief law judge's decision *de novo*, as our precedent requires.<sup>12</sup>

As noted above, respondent and AOPA assert the PBR precluded the Administrator from commencing an enforcement action against respondent's certificate. While AOPA focuses only on the argument concerning the timing of the Administrator's provision of air traffic data, respondent's argument is two-fold, focusing on both the PBR notification requirement as well as access to air traffic data. We address both arguments in turn.

### *A. Notification of Impending Enforcement Action*

The PBR requires "the Administrator shall provide timely, written notification to an individual who is the subject of an investigation relating to the approval, denial, suspension,

---

<sup>10</sup> After submitting his appeal brief, respondent filed a Motion for Oral Argument. We find the parties have briefed the issues fully, and we conclude oral argument is not necessary. See 49 C.F.R. § 821.48.

<sup>11</sup> 49 C.F.R. § 821.9(b).

<sup>12</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

modification, or revocation of an airman certificate under chapter 447 of title 49, United States Code.”<sup>13</sup> Respondent asserts an investigation began the moment he was instructed to contact the ATC tower to discuss the alleged violation. Respondent also cites Administrator v. Brasher in noting FAA facilities must notify an airman when ATC suspects the airman deviated from a clearance.<sup>14</sup> Respondent argues the Administrator effectually begins an investigation the moment ATC issues a Brasher notification “because FAA representatives have concluded a deviation ... *need[s] to be investigated.*”<sup>15</sup>

In practice, ATC will issue a notification consistent with Brasher when controllers believe the pilot may have deviated from an ATC instruction or clearance. ATC will then request the pilot call the appropriate ATC facility when he or she lands. The purpose of this notification is to inform the airman ATC needs more information from him or her. ATC may then inform the relevant officials at the FAA, who determine whether they need to investigate the suspected deviation. ATC staff cannot reasonably halt their duties to provide the “timely, written notification” the PBR requires when the airman is in the midst of operating his or her aircraft; instead, Brasher merely requires Air Route Traffic Control Centers verbally notify the airman of the possible pilot deviation.

Moreover, reading paragraphs (1) and (2) of subsection 2(b) of the PBR, one must logically conclude Congress contemplated the Administrator’s Letter of Investigation (LOI) to function as the “timely, written notification” the statute requires. Section 2(b)(2) specifies six

---

<sup>13</sup> Supra note 4 at § 2(b)(1).

<sup>14</sup> 5 NTSB 2116, 2118 (1987) (citing FAA Order 7110.65D and stating the Board will not issue a sanction against an airman when Air Route Traffic Control Centers fail to notify the airman of a suspected pilot deviation).

<sup>15</sup> Appeal Br. at 10 (emphasis added).

items the Administrator must include in the LOI, which includes a general statement describing “the nature of the investigation.”<sup>16</sup> Such a requirement indicates Congress considered the LOI to function as the first communication the Administrator provides to the airman with regard to the alleged violation. Further, section 2(b)(2)(F) requires the FAA inform the individual, via the LOI, that he or she is entitled to the air traffic data the statute describes in section 2(b)(4). The expectation that ATC must write and issue an LOI, complete with all requisite information listed at section 2(b)(2) of the PBR, contemporaneously with the Brasher notification is unreasonable and contrary to the plain language of the PBR. As a result, we affirm the chief law judge’s determination that the Administrator did not fail to adhere to the requirement of section 2(b)(1) of the statute.

B. *Access to Air Traffic Data*

The PBR further requires the “timely, written notification” must inform the individual of the nature of the investigation, and that the individual is entitled to access or otherwise obtain air traffic data described in section 2(b)(4) of the statute, among other rights. Accordingly, paragraph (4) requires the Administrator to provide to the individual “timely access” to any air traffic data in the Administrator’s possession “that would facilitate the individual’s ability to productively participate in a proceeding relating to an investigation.”<sup>17</sup> The statute defines “air traffic data” as relevant ATC tapes, radar information, ATC statements, flight data, investigative reports, and any other air traffic or flight data in the Administrator’s possession that would facilitate the individual’s productive participation in the proceeding.<sup>18</sup> As a method of ensuring

---

<sup>16</sup> Supra note 4 at § 2(b)(2)(A).

<sup>17</sup> Supra note 4 at § 2(b)(4)(A).

<sup>18</sup> Supra note 4 at § 2(b)(4)(B).

the timely provision of air traffic data, the statute prohibits the Administrator from *proceeding against* the individual during the 30-day period beginning on the date on which the air traffic data is made available to the individual.

On appeal, respondent contends the Administrator did not provide the air traffic data to him in a timely manner, because the Administrator provided the data to him simultaneously with the Administrator's NOPCA. Respondent contends the PBR obligated the Administrator to provide the data to respondent more than 30 days prior to issuing the NOPCA, because the issuance of a NOPCA is an act of "proceed[ing] against" him under the PBR. Respondent bases this argument on the assertion that the Administrator *began the investigation* "during the period potential violations were being *considered* and before the NOPCA was issued."<sup>19</sup>

Respondent's emphasis on the time at which the FAA commences an investigation is misdirected. Under such an interpretation, the Administrator would be deemed to have proceeded officially against respondent as early as one to two days after the April 15, 2013 violation.<sup>20</sup> The act of merely considering the commencement of an investigation against a respondent does not constitute a legal "proceeding against" the individual; as explained below, such an interpretation is inconsistent with our procedural Rules of Practice and precedent from both the Board and federal appellate courts.

We find the *amicus* brief AOPA submitted to be germane to the issue of the timely availability of air traffic data. As AOPA noted, Congress enacted the PBR to provide "greater

---

<sup>19</sup> Appeal Br. at 12 (emphasis added).

<sup>20</sup> Tr. 143-44, 184-85 (testimony of FAA investigator Cardenas, who stated he began his investigation approximately one to two days following the alleged violation, and who recalled he sent the LOI describing the nature of the investigation on April 19, 2013).



fairness” for parties affected by FAA enforcement proceedings.<sup>21</sup> To achieve this objective, Congress intended the relevant information be accessible to an airman to facilitate his or her ability to respond to an FAA investigation thoroughly and properly. Regarding air traffic data, the Administrator possesses this information, but it is not automatically available to airmen. AOPA notes Congress sought to remedy this lack of availability in section 2(b) of the PBR. In addition, in light of this concern for prompt availability of the necessary information, AOPA asserts Congress intended the term “proceed against” an individual under section 2(b)(5) of the PBR to include a time *before* the Administrator issues an order of suspension. If the PBR does not require the Administrator to provide air traffic data until the Administrator issues the NOPCA, then the timing provision of section 2(b)(5) would be futile; as described below, the NOPCA indicates the Administrator has already determined it will take enforcement action.

Each aviation certificate enforcement appeal we review consists of several routine steps, and the Administrator is required to comply with several procedural requirements in a non-emergency case before the case is ripe for review by an NTSB administrative law judge.<sup>22</sup> After

---

<sup>21</sup> *Amicus Curiae* Brief of the Aircraft Owners and Pilots Ass’n at 7; see also 158 Cong. Rec. H5100-01 (July 23, 2012) wherein Rep. Bucshon stated, “S. 1335, the Pilot’s Bill of Rights, is intended to restore fairness to airmen and Federal Aviation Administration enforcement proceedings by providing airmen timely access to critical information.”

<sup>22</sup> The Administrator must provide timely, written notification to the respondent, as well as an enforcement investigation report upon request. Supra note 4 at § 2(b)(1); 77 Fed. Reg. 63242 (Oct. 16, 2012) (Preamble to NTSB Interim Final Rule stating, “[s]ubsection 2(b) of the statute requires the FAA provide ‘timely, written notification’ to individuals who are the subject of an FAA enforcement action regarding the ‘nature of the investigation’”); see also supra note 4 at § 2(b)(2)(E) (stating the written notification must include a statement saying “the releasable portions of the Administrator’s investigative report will be available to the individual”). The Administrator must then notify the respondent of the *proposed* certificate action. Title 49 U.S.C. 44709(c) provides, in part: “(c) **Advice to certificate holders and opportunity to answer.**--Before acting under subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action.” In addition, the Administrator must provide the respondent with an opportunity to participate in an informal conference to discuss the proposed action and potential settlement. Id.

the conclusion of these steps, the respondent may choose to appeal the Administrator's order, which prompts the Administrator to file the order as the complaint in the case.<sup>23</sup> Once the NTSB's Office of Administrative Law Judges receives the complaint and appeal, the NTSB's jurisdiction over the case commences. Completion of each of these steps is well-established.

The Administrator issues a NOPCA to comply with its statutory obligation to provide the certificate holder notice proposing an action before ordering the non-emergency suspension or revocation of a certificate. According to FAA Order 2150.3B, FAA Compliance and Enforcement Program, the Administrator complies with this requirement by setting forth, in a NOPCA, the basis for the alleged violation and the type of certificate action the Administrator will propose to take. FAA Order 2150.3B also states "[w]hen it is determined that certificate action on a nonemergency basis is appropriate, FAA legal counsel prepares a notice of proposed certificate action."<sup>24</sup> Elsewhere in FAA Order 2150.3B, the FAA states it "initiates a case" by issuing a NOPCA.<sup>25</sup>

We disagree with the Administrator's contention that a NOPCA does not have "any *independent* legal effect on an airman's certificate."<sup>26</sup> The Administrator cites Administrator v. Scroggins for this notion, in which the Board stated the NOPCA was simply a notice, and was

---

(..continued)

(stating, in non-emergency cases, "the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.") These steps in the process indicate the respondent has the opportunity to request the air traffic data prior to the issuance of the NOPCA.

<sup>23</sup> 49 C.F.R. § 821.31(a).

<sup>24</sup> FAA Order 2150.3B at 6-10, ¶ 10(a). (Oct. 1, 2007).

<sup>25</sup> Id. at 6-8, ¶¶ 9(d)(3),(4).

<sup>26</sup> Reply Br. at 29 (emphasis added).

not the complaint and order of suspension.<sup>27</sup> In Scroggins, the Board went on to describe the purpose of the NOPCA as a notification to a respondent of the potential charges against him or her to allow the respondent to “analyze various possible courses of action.”<sup>28</sup> While such a description is helpful, it does not dispose of the issue of whether the Administrator’s issuance of a NOPCA constitutes the Administrator’s act of *proceeding against* a person’s certificate.

In our Rules of Practice, we find the NOPCA has procedural significance and represents an important point in a certificate action. For example, the stale complaint rule, codified at 49 C.F.R. § 821.33, provides a respondent may move to dismiss a complaint as stale if the Administrator waits more than six months following the discovery of an alleged violation before “advising the respondent as to the reasons for proposed action” against the respondent’s certificate. The Court of Appeals for the District of Columbia Circuit, as well as several Board cases, consistently recognize the significance of the NOPCA as the point that the Administrator has advised the respondent of the reasons for the proposed action for purposes of the stale complaint rule.<sup>29</sup>

We are mindful of the language in our Final Rule preamble in which we promulgated several changes to our Rules of Practice based on the PBR. In particular, we stated we could not enforce a requirement that the Administrator release air traffic data as soon as it begins its investigation into an alleged violation.<sup>30</sup> The Administrator quotes this text in support of his

---

<sup>27</sup> 7 NTSB 1382, 1384 (1991).

<sup>28</sup> Id.

<sup>29</sup> Ramaprakash v. FAA, 346 F.3d 1121, 1122 (D.C. Cir. 2003) (stating, “on April 22, 1998, the FAA formally initiated administrative proceedings to suspend his pilot’s certificate by issuing a Notice of Proposed Certificate Action (NOPCA)”); see, e.g., Administrator v. Shrader, NTSB Order No. EA-5100 (2004); Administrator v. Wells, 7 N.T.S.B. 1247 (1991).

<sup>30</sup> 78 Fed. Reg. 57527, 57532 (Sept. 19, 2013).

position that the Board will not oversee pre-appeal matters. We reiterate the validity of this argument: we do not have authority, and have never sought jurisdiction over, a matter the Administrator is investigating. Once a respondent files an appeal pursuant to our appellate review authority as codified at 49 U.S.C. § 1133, however, our Rules of Practice take effect and allow us to review certain procedural matters *ex post facto*.<sup>31</sup>

The plain text of the PBR prohibits the Administrator from proceeding against a respondent during the 30-day period beginning on the date on which the Administrator makes the air traffic data available to the respondent. Our reading also comports with the intent of the plain language of the statute—to “facilitate the individual’s ability to productively participate in a proceeding relating to an investigation.”<sup>32</sup>

Finally, we note our holding in this case—that the Administrator’s issuance of a NOPCA is an act of “proceeding against” an individual—is limited to the procedural issue of the timing of the provision of air traffic data and the provision of “timely, written notification” under the PBR.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent’s appeal is granted;
2. The chief law judge’s initial decision is reversed; and
3. The Administrator’s complaint against respondent is dismissed without prejudice.

---

<sup>31</sup> For example, under the stale complaint rule, we review whether the Administrator issued the NOPCA within six months of learning of the alleged violation. 49 C.F.R. § 821.33. We also review whether the Administrator provided the enforcement investigation report to the respondent by the time the Administrator serves the complaint on the respondent. 49 C.F.R. § 821.19(d).

<sup>32</sup> Supra note 4 at § 2(b)(4)(A).

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT AND WEENER, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA  
 NATIONAL TRANSPORTATION SAFETY BOARD  
 OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*

In the matter of:	*	
	*	
MICHAEL P. HUERTA,	*	
ADMINISTRATOR,	*	
FEDERAL AVIATION ADMINISTRATION,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-19598
	*	JUDGE MONTAÑO
GREGORY WILCOX,	*	
	*	
Respondent.	*	

\* \* \* \* \*

United States Tax Court  
 51 S.W. First Avenue  
 Courtroom 1524  
 Miami, Florida 33130

Friday,  
 April 11, 2014

The above-entitled matter came on for hearing, pursuant  
 to Adjournment, at 9:30 a.m.

BEFORE: ALFONSO J. MONTAÑO,  
 Chief Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

RYAN PATANAPHAN, ESQUIRE  
Office of Regional Counsel  
Federal Aviation Administration  
Southern Region  
P.O. Box 20636  
1701 Columbia Avenue  
College Park, Georgia 30337  
(404) 305-5200  
ryan.patanaphan@faa.gov

On behalf of the Respondent:

STUART A. GOLDSTEIN, ESQUIRE  
Stuart A. Goldstein, P.A.  
7300 North Kendall Drive, Suite 380  
Miami, Florida 33156  
(305) 670-1222  
stuartgoldsteinpa@att.net

P R O C E E D I N G S

ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MONTAÑO: This is a proceeding under the provisions of 49 USC Section 44709, formerly known as Section 609 of the Federal Aviation Act, and under the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

This matter has been heard before me as an administrative law judge and as provided by the Board's Rules, I have elected to issue an oral initial decision.

Pursuant to Notice, this matter came on for trial on April 10th and 11th in Miami, Florida. The Administrator was represented by one of his staff counsel, Mr. Ryan Patanaphan, Esquire, of the Office of General Counsel, Southern Region, Federal Aviation Administration. The Respondent was represented by Mr. Stuart A. Goldstein, Esquire.

The parties were afforded a full opportunity to offer



1 evidence, to call, examine, and cross-examine witnesses and make  
2 arguments in support of their respective positions. I will not  
3 discuss all of the evidence in detail. I have, however,  
4 considered all of the evidence, both oral and documentary. That  
5 which I do not specifically mention is viewed by me as either  
6 being corroborative or not materially affecting the outcome of  
7 this decision.

8 Mr. Gregory Wilcox, the Respondent, has appealed the  
9 Administrator's Order of Suspension dated December 23rd, 2013.

10 ADMINISTRATIVE LAW JUDGE MONTAÑO: Administrator's Order  
11 of Suspension dated December 23rd, 2013 pursuant to 821.31(a) of  
12 the Board's Rules. The Administrator filed a copy of that  
13 suspension order on January 3rd, 2014, which serves as the  
14 complaint in this case. The Respondent filed a timely answer to  
15 the complaint.

16 The Administrator ordered a 90-day suspension of all of  
17 the Respondent's airman's certificates, including his airline  
18 transport pilot's certificate, based on the allegations that he  
19 violated Section 91.13(a) and 91.123(a) of the Federal Aviation  
20 Regulations.

21 The Administrator subsequently amended his complaint to  
22 add allegations 11 and 12 of the complaint. The Respondent filed  
23 an answer to the amended complaint within the provided time frame.

24 AGREEMENTS

25 As to the agreements in this case, in his answer to the

1 Administrator's complaint, the Respondent admitted paragraphs 1,  
2 2, 3, 4, 7 of the complaint, and 11 and 12 in the amended  
3 complaint. As the Respondent has admitted those allegations, they  
4 are deemed to have been established for the purpose of this  
5 decision.

6 The Respondent has denied paragraph 5 for lack of  
7 knowledge, has denied paragraph 6 and denied paragraph 9 and 10,  
8 as well as denying that he violated any of the charged sections of  
9 the Federal Aviation Regulations.

10 The parties stipulated to the admission of the exhibits  
11 at the beginning of this case. The Administrator moved for the  
12 admission of Exhibits A-1 through A-13. The Respondent moved for  
13 the admission of Exhibits R-1 through R-4 under the stipulation  
14 between the parties.

15 The Respondent moved for the admission of R-5, which  
16 constitutes excerpts from Order JO 7110.65U. These excerpts were  
17 admitted over the objection of the Administrator who argued that  
18 those excerpts were an incomplete document as the entire document  
19 had not been provided.

20 Respondent also moved the admission of R-6, another page  
21 of Order JO 7110.65U, without objection from the Administrator.

22 DISCUSSION

23 Now we'll talk about the testimony in this case. The  
24 Administrator, of course, presented his case first because he has  
25 the burden of proof.

1           The first witness was Mr. Andrew LaCroix. Mr. LaCroix  
2 is an ATC specialist, air traffic control specialist at Fort  
3 Lauderdale Executive Airport. He's certified to perform duties  
4 relative to ground control, clearance delivery, flight data and as  
5 a local controller. He indicated he was a cab coordinator and a  
6 CIC coordinator. He testified he has worked as an air traffic  
7 control specialist since January of 2012.

8           He testified he was working on April 15th, 2013 and at  
9 that time was certified and working as a ground controller. He  
10 testified his duties were to direct the aircraft to taxi from the  
11 FBO, field based operations, to runways and to prevent aircraft  
12 from colliding with each other, from colliding with tugs or  
13 refueling trucks.

14           He testified he can instruct aircraft to taxi up to  
15 runways and hold short of the runway. He has to obtain authority  
16 from the local controller in the tower to allow an aircraft to  
17 cross a runway. He testified he provides taxi instructions and  
18 the pilot is required to read back the instructions along with  
19 their call sign for the aircraft.

20           On April 15, 2013, as I said, he was working as a ground  
21 controller. He testified that he instructed Respondent to taxi to  
22 Runway 13 at Alpha via Echo-Bravo-Alpha. According to  
23 Mr. LaCroix, the read back of the instructions were not correct so  
24 he asked the Respondent to read back the instructions with the  
25 call sign of his aircraft. Mr. Wilcox responded to that request

1 from Mr. LaCroix.

2 Mr. LaCroix then testified he saw the Respondent cross  
3 the hold short lines ran Runway 13 and ordered him to stop.  
4 According to Mr. LaCroix, the word stop in the control tower is a  
5 significant word in that everyone listens when that word is  
6 spoken.

7 Mr. LaCroix testified that after the Respondent stopped,  
8 Mr. LaCroix obtained permission from the local controller to allow  
9 Respondent to cross Runway 13. After he obtained permission and  
10 he instructed Respondent to cross Runway 13 at Taxiway Echo, once  
11 off the runway to continue left on Golf, left on Alpha, hold short  
12 Runway 13 at Intersection Alpha. Mr. LaCroix testified the  
13 Respondent did not follow those instructions. Instead he veered  
14 left onto Taxiway Alpha and continued on Alpha. Thus, he was  
15 pointing 180 degrees from where he should have been headed had he  
16 followed Mr. LaCroix's instruction. Mr. LaCroix testified that he  
17 thought the Respondent was lost.

18 On cross-examination, Mr. LaCroix testified that he's  
19 not a pilot; his control tower certificate was dated 4/4/2014,  
20 which indicated that he, as of that date, he is fully certified on  
21 all positions in air traffic control.

22 On April 15th, 2013, as noted he was the ground  
23 controller and was certified as a ground controller. He testified  
24 he filled out the form at Exhibit A-5 at the request of his  
25 supervisor. He testified that he filled out that form on April

1 16, 2013, which was the day after the event took place.

2 Mr. LaCroix testified that he did not originally tell  
3 Respondent to hold short, but he did so later in his  
4 communications with the Respondent. However, he also testified he  
5 did not have to tell the Respondent to hold short under the  
6 circumstances of this case.

7 When shown Exhibit R-5 he agreed that the document was  
8 binding upon him. When asked to review R-5, page 3-7-2(b), he  
9 testified he did not believe the section applied to the situation  
10 in this case. He testified that he was not required to provide a  
11 specific instruction to hold short of Runway 13 or 13 because the  
12 Respondent was not crossing Runway 13.

13 He agreed that his written statement did not state that  
14 he instructed Respondent to hold short, but he testified he was  
15 not required to do. He testified that he was not familiar with  
16 Federal Aviation Regulations and did not know whether or not there  
17 was a definition in the Federal Aviation Regulations applicable to  
18 the term runway.

19 He agreed that there was no definition for a hold short  
20 line in Exhibit R-5. He testified he was aware -- he agreed that  
21 there was no definition for a hold short line. He also testified  
22 that he was aware of the definition of runway in the handbook for  
23 ATC, air traffic controllers. He agreed that the definition at  
24 Exhibit R-5, PCGR-6 included a definition of the word runway and  
25 that it was the only definition he knew.

1           Mr. LaCroix testified his job was to ensure safe  
2   operation of aircraft on the airport surface. He was shown the  
3   airport diagram and identified the run-up area, from where he  
4   instructed Respondent to taxi to Runway 13 at Alpha.

5           Respondent should have made a left turn on Bravo and  
6   then a right turn on Alpha and he agreed that the Respondent had  
7   missed the left turn on Bravo. He also testified he did not call  
8   Respondent to let him know that he had missed his left turn on  
9   Bravo because he had other aircraft to control. He agreed that he  
10   should have.

11           When asked if Respondent entered the runway, Mr. LaCroix  
12   testified Respondent did enter the runway passing the hold short  
13   line, because he believed passing the hold short line is entering  
14   the runway, the runway area.

15           Mr. LaCroix testified he did not issue a hold short  
16   instruction to a different aircraft, which was discussed at  
17   Exhibit A-8 at time indicated at 1620:01.

18           On redirect he testified he did not have to issue a hold  
19   short instruction to Respondent. He testified he cleared him to  
20   Runway 13 at Alpha. Once Respondent passed the hold short line he  
21   was ordered to stop. He testified that FAA Order JO 7110.65U, 3-  
22   7-2(b) did not apply to these circumstances because the Respondent  
23   was not crossing a runway, Mr. LaCroix had instructed Respondent  
24   to taxi to. He would issue a hold short order at a runway if the  
25   Respondent was going to cross that runway. There was no recross

1 of Mr. LaCroix.

2           In response to my questions he agreed that the  
3 Respondent had read back the instructions to taxi by saying that  
4 he would hold short on 13 Intersection Alpha even though  
5 Mr. LaCroix did not specifically instruct him to hold short. He  
6 testified that he gave the hold short instruction again only if  
7 the aircraft is crossing another runway. If that was to occur, he  
8 would have to ask local controller to release the aircraft to  
9 cross the runway. He testified that once he obtained clearance  
10 from local controller to send the Respondent across Runway 13, the  
11 Respondent again did not follow his instructions. That completed  
12 the testimony of Mr. LaCroix.

13           The Administrator then called Mr. Jeffrey Page as a  
14 witness. Mr. Page testified he is employed by the FAA as an air  
15 traffic controller at Fort Lauderdale Executive Airport. He's  
16 been employed since 1998 and has been an ATC, or air traffic  
17 controller, for 16 years.

18           He was an air traffic controller at North Point Airport  
19 and in Puerto Rico as well. He is a certified professional  
20 controller and is certified to work all the areas of air traffic  
21 control. He testified that as a local controller he has control  
22 of the airspace 3 miles around the airport up to a 2,000 feet  
23 altitude and he has control of the runways. He scans the runways  
24 to make sure no one is in the runway and make sure that it is  
25 cleared for takeoffs and landings.

1           He testified the hold short line at the intersection of  
2 Alpha and Runway 13 was to allow for a more expeditious departure  
3 so the aircraft did not have to cross Runway 8.

4           Mr. Page testified that an aircraft cannot pass the hold  
5 short line without contacting him, the local controller. He  
6 testified that ground control must have his permission to allow an  
7 aircraft to cross a runway. He testified that the area between  
8 the hold short line and the runway's edge was a safety area. He  
9 testified it was like a median on a highway.

10          Mr. Page testified that when an aircraft is ready to  
11 depart the aircraft contacts him, the local controller, and he  
12 will either instruct them to hold short or put them on a runway  
13 and wait. He will then clear the aircraft for takeoff. He  
14 testified that aircraft could not wait in the safety area he had  
15 described. He, as a local controller, has control over the safety  
16 areas of the airport.

17          Mr. Page testified that he listened to the ATC tapes  
18 before hearing and that on April 15, 2013 the Respondent initially  
19 contacted the tower and contacted him by mistake and he was  
20 instructed by Mr. Page to contact ground control. Mr. Page  
21 testified that he had just cleared a Twin Engine Cessna for  
22 takeoff on Runway 13 when he saw Respondent crossing the hold  
23 short bars and was heading towards the runway.

24          He testified he contacted the Twin Engine Cessna and  
25 cancelled the takeoff clearance. He testified he then gave ground



1 control clearance to get the Respondent off the runway to cross  
2 Runway 13.

3 He was directed to Exhibit A-10 regarding his  
4 instructions to the Twin Engine Cessna and he testified that  
5 Exhibit A-10(b), that he was in the process of clearing the Twin  
6 Engine Cessna for takeoff. The Twin Engine Cessna responded as  
7 part of the transcript at 1627:57 and that response was, "okay  
8 cleared for takeoff," and it gave its call sign.

9 Mr. Page then testified that he ordered the Twin Cessna  
10 to hold its position, to cancel the takeoff clearance, and this  
11 occurred at 1627:58 of the ATC recordings, transcript of the ATC  
12 recording. Mr. Page testified that he did so, cancelled the  
13 takeoff clearance because the Respondent was pulling onto the  
14 runway. He testified the Respondent was in the safety area  
15 approaching Runway 13.

16 On cross-examination he testified he was not a pilot.  
17 He was asked to write a statement regarding the events and he  
18 wrote that statement on April 16th, 2013, a day after the event  
19 occurred.

20 He testified he did not include the intersection where  
21 the incident occurred. He agreed that Order JO 7110.65U is the  
22 ATC instruction manual, or as counsel for Respondent put it, his  
23 bible. He also agreed that the sections he was allowed to review  
24 did not say anything about a safety area or run-up areas.

25 He testified he did not use the specific words "cleared

1 for takeoff" when he cleared the Twin Cessna for takeoff. He  
2 testified he was in the process, but could not finish the  
3 clearance because Respondent entered the safe area of Runway 13.

4 He agreed that the Twin Cessna was not cleared for  
5 takeoff until he cleared him. He agreed that if the Twin Cessna  
6 went on the runway, it would be a violation as the Twin Cessna had  
7 not been cleared for takeoff.

8 He testified that he told the Twin Cessna to cancel the  
9 takeoff clearance and Mr. Page instructed the Respondent to call  
10 the tower after the incident because he was required to do so in  
11 the event of a pilot deviation. Mr. Page testified he did not  
12 speak to Mr. Wilcox when he subsequently called the tower.

13 On redirect he reiterated he cancelled the Twin Cessna's  
14 takeoff clearance because Respondent had taxied into the safe  
15 area. Mr. Page was directed to R-5, PCG R-6, and asked about the  
16 meaning of RSA, the initials RSA. He testified that the initials  
17 stood for runway safety area. He testified that the definition  
18 was probably on the next page, which Respondent did not include in  
19 his excerpts of that exhibit.

20 After lunch the Respondent returned with what he  
21 purported to be a definition of RSA, which was admitted into  
22 evidence as R-6. Mr. Page read the definition and testified that  
23 the definition included the safety areas about which he testified.  
24 He had testified the Respondent's aircraft did pass the hold short  
25 line and it taxied into the safety area. He testified he did not

1 know if there was a definition for runway safety area in the  
2 Federal Aviation Regulations and he testified he only knew of the  
3 definition in the documents he was asked to read by the  
4 Respondent's counsel. When asked if a pilot had to know the  
5 definition of RSA, Mr. Page responded that it was a public  
6 document.

7 In response to my questions, he testified that he  
8 referred to "a little lost pilot" at A-10(b). When he made that  
9 comment he was referring to Respondent.

10 I found him to be credible on both cross and direct and  
11 found him to be an experienced air traffic controller. I should  
12 note I also found Mr. LaCroix to be a credible witness both on  
13 direct and cross-examination.

14 The Administrator then called Mr. Theodore Del Negri as  
15 its next witness. Mr. Del Negri is currently employed by the FAA  
16 as an air traffic control manager at Fort Lauderdale Executive  
17 Airport. He has been in that position since June of 2013. Before  
18 that, he was at Fort Lauderdale International Airport for 7 years.  
19 During that time, he spent 3 years as a front-line manager and  
20 4 years as an operations manager.

21 He testified he's not certified as an ATC, air traffic  
22 controller, he is an administrator; however, he testified he does  
23 conduct training for air traffic controllers. His duties also  
24 include hiring and firing, labor relations, and overseeing the  
25 construction of a new tower.

1           As to his duties in training air traffic controllers, he  
2 testified that he has to know the procedures relative to air  
3 traffic control in order to perform the training. He testified  
4 that when the aircraft requests clearance, the pilot requests  
5 clearance, ground control must determine the aircraft's position  
6 on the field and make a positive identification of the aircraft.

7           Ground control then provides a specific route to the  
8 runway and clears the runway to a departure point, for example, a  
9 departure point as to Runway 8 or Runway 13. He testified that  
10 the departure point was the hold short bars before the runway. He  
11 testified that the departure point was not on the runway or past  
12 the hold short bars or hold short line.

13           Mr. Del Negri testified that a pilot has to obtain  
14 clearance to enter the runway from the local controller. Ground  
15 control cannot give or provide such a clearance to an aircraft or  
16 to the pilot of an aircraft.

17           He was directed to read R-5, 3-7-b and testified that a  
18 hold short order was not required when ground control only  
19 provides clearance to a runway departure point. For example, he  
20 gave examples as to instructions to taxi to Runway 13.

21           The clearance that is given, for example, when ground  
22 control instruct an aircraft to taxi to Runway 13, the clearance  
23 only requires that instruction and does not require a hold short,  
24 an instruction of hold short of Runway 13. He testified a hold  
25 short order instruction is only necessary when a pilot and his

1 aircraft are going to cross another runway.

2 On cross-examination Mr. Del Negri testified that Order  
3 JO 7110.65U was the air traffic control handbook. However, he  
4 testified that the excerpts used in court were from last year's  
5 edition.

6 He testified that the hold short bars could be  
7 considered a point along the taxi route. When he was asked that  
8 question by Respondent's counsel, he testified that ground control  
9 taxi clearance was limited to the departure point. The end of the  
10 taxi instructions constituted the departure point. He was asked  
11 to review R-5, 3-7-11 and he agreed that ATC is bound by that  
12 section.

13 He was asked about the definition of a safety area. He  
14 then read the definition provided at R-6 and testified it applied  
15 to the area beyond the hold short bars and before the edge of the  
16 runway.

17 In response to my question, he testified the runway is  
18 identified by runway markings. He testified that the area beyond  
19 the hold short line and the edge of the runway marked where runway  
20 markings exist is considered a safety area.

21 I found that Mr. Del Negri was a very credible witness  
22 and knowledgeable as to air traffic procedures.

23 The Administrator's last witness was Aviation Safety  
24 Inspector Edward Cardenas. He has worked with the FAA since  
25 September of 2009. He is currently employed at Fort Worth

1 conducting special investigations.

2 He described his duties as performance surveillance,  
3 ramp inspection, accident investigation and he performs operations  
4 with Customs and Border Enforcement. He testified that he had to  
5 undergo 6 months indoctrination or a training program which  
6 covered regulations, compliance, and enforcement.

7 He testified that a prerequisite to becoming an air  
8 safety inspector a person must be ATP-certified, has to be a  
9 certified flight instructor, certified instrument instructor, must  
10 be certified in multi-engine operation, and must have no less than  
11 1,500 total aircraft time. He testified that he has a total of  
12 6,500 hours.

13 He testified that this case was assigned to him by his  
14 front-line manager. He testified he reviewed the ATC tapes, and  
15 reviewed the facts. He then sent a Letter of Investigation to the  
16 Respondent, which included a statement relative to the  
17 Respondent's rights under the Pilot's Bill of Rights. He  
18 continued his investigation and concluded that the Respondent had  
19 violated the regulations.

20 Air Safety Inspector Cardenas then identified and  
21 testified as to the sanction guidelines at Exhibit A-12. He  
22 testified that a suspension period of 30- to 90-days is the range  
23 of sanction for a deviation from air traffic control instructions  
24 or clearance, which is at A-12, B-3-h(5).

25 He testified that Exhibit A-13(d), 7-4, described

1 mitigating and aggravating factors and elements which should be  
2 considered in determining an appropriate sanction.

3 He then testified that another factor which could be  
4 considered was the certificate holder's level of experience. A  
5 certificate holder with a greater level of experience may be held  
6 to a higher standard. Air Safety Inspector Cardenas also  
7 testified that an airman's violation history was another factor  
8 that could be considered in determining the appropriate sanction.

9 On cross-examination he testified he met with Mr. Wilcox  
10 on April 15th, 2013, but during that meeting that was on a  
11 completely unrelated matter, as he put it. He was then asked  
12 about a letter sent by Respondent's attorney to Mr. Cardenas to  
13 which Mr. Cardenas had not responded.

14 Mr. Cardenas testified that request for information had  
15 to be made by the Federal Aviation Administration's counsel. He  
16 testified that the aircraft flown on April 15, 2013 was a Cherokee  
17 VI, a single engine aircraft. I found Mr. Cardenas' testimony to  
18 be credible both on direct and cross-examination as well.

19 At the close of the Administrator's case, the Respondent  
20 moved for the dismissal of the case arguing that the Administrator  
21 had not proven a prima facie case. I denied that motion based on  
22 the evidence before me and I found that the Administrator had  
23 proven his prima facie case.

24 Once I made that ruling, the Respondent then presented  
25 his case. Respondent Gregory Wilcox took the stand and presented

1 the only testimony in support of his case. On direct he testified  
2 on April 15th he was preparing for a flight to Bimini in the  
3 Bahamas. He was flying a Piper Cherokee VI. He testified the  
4 flight was a pleasure flight.

5 Mr. Wilcox testified he began his flight at a hold short  
6 line at the C point on the airport diagram and called for taxi  
7 instructions. He testified ground control gave him instructions  
8 to taxi to the run-up area where he completed his run-up.

9 He testified he then radioed local control by mistake  
10 asserting that the radio frequencies switch in his aircraft  
11 switched frequencies unexpectedly on his radios. He was then  
12 instructed by ground control to Runway 13 Echo to Bravo to Alpha.

13 In response to his attorney's question as to whether or  
14 not he had been instructed by ground control to hold short at the  
15 hold short line of the runway, he responded, and I quote, "I don't  
16 recall." When he was asked by counsel if he taxied past the hold  
17 short line he testified and I quote, "I may have a little."

18 He testified he could not say how far over the hold  
19 short line he had taxied. He testified that he was in the process  
20 of stopping when he was told to stop by ground control.

21 Mr. Wilcox testified he stopped clear enough from the runway, from  
22 Runway 13 to allow an aircraft to take off. He testified that he  
23 eventually took off.

24 He testified that he saw the Twin Engine Cessna that had  
25 been discussed in this case, but he testified that the aircraft,



1 when he saw it, was not on the runway at the time. He testified  
2 he was told to call the control tower to give a statement and he  
3 asked if he could make the contact upon his return from his trip.

4 He testified that upon his return he went to customs to  
5 make his call. He had to go through customs and after that he was  
6 going to make his call. That's what I understood his testimony to  
7 be. He said at that time at customs he was confronted by Aviation  
8 Safety Inspector Cardenas and customs officials in a very  
9 argumentative manner.

10 He testified that they accused him of being under the  
11 influence of alcohol and he was required to wait for a testing  
12 official to arrive at the airport to give him a sobriety test. He  
13 testified that he was found to be sober. He testified that after  
14 that he was questioned by Mr. Cardenas about the runway incursion  
15 as well as about alleged illegal charter activity.

16 Mr. Wilcox then testified he was placed in a holding  
17 area by customs officials for 3 hours. He testified when he was  
18 released he called the tower, but did not remember who he had  
19 spoken to. He was told that there was a possible pilot deviation  
20 and the incident had to be investigated and that he would hear  
21 from the Flight Standards District Office.

22 He testified he was not given his rights under the  
23 Pilot's Bill of Rights by the tower when he called the tower or by  
24 Mr. Cardenas during the conversation on April 15th at the customs  
25 area. When asked why he read back that he would taxi to Runway 13

1 and hold short, he testified that he did taxi to Runway 13 and did  
2 hold short.

3 I had asked him what the words "hold short" meant to him  
4 and he responded holding short before beginning taxiing and  
5 contacting ground control for taxiing instructions. He testified  
6 that when he taxied to a runway he could taxi up to and excluding  
7 the runway area.

8 He testified he was not told to hold short on the day of  
9 this event, but he testified that typically as a pilot you would  
10 hold short of the runway. When asked where he understood he was  
11 supposed to hold short of the Runway 13, he replied he did not  
12 recall where he was supposed to hold short; however, he testified  
13 that he did cross the hold short bars.

14 He testified he is an ATP. He has a commercial pilot's  
15 certificate, a private pilot's certificate with an instrument  
16 rating. He testified he has about 8- to 10,000 hours of flight  
17 time. He testified at the time he was told to stop by ground  
18 control, he was getting ready to radio for clarification regarding  
19 where he was supposed to stop.

20 He then testified he was looking for the hold short  
21 line, but could not see it because his aircraft had a heavy rear  
22 center of gravity and there was luggage in the back so he could  
23 not see the -- I understood his testimony to mean that he could  
24 not see the hold short line.

25 He then testified that he used his own definition of

1 holding short of the runway. When I asked him if during his  
2 training as an ATP, a commercial pilot, a private pilot and with  
3 an instrument rating, training, if he was ever trained to use his  
4 own definition when holding short of the runway. He responded  
5 that the AIM, the Airman Information Manual, says that you should  
6 hold short of the runway. However, the remainder of his answer  
7 was evasive and non-responsive. He testified he did not enter the  
8 runway area of the runway zone.

9 After the Respondent rested, the Administrator called  
10 Aviation Inspector Cardenas to testify in response to the  
11 allegations that he spoke to the Respondent about the alleged  
12 runway incursion on April 15, 2013 and the allegation that he did  
13 not apprise Respondent of his rights under the Pilot's Bill of  
14 Rights.

15 Mr. Cardenas testified he did not discuss the runway  
16 issue with the Respondent because he had not been assigned to  
17 investigate the case until a few days after the incident. He  
18 testified that he spoke to Mr. Wilcox only about the allegation of  
19 the concern of Respondent's possible intoxication on April 15th,  
20 2013. I found Mr. Cardenas' testimony again to be credible.

21 Now I will discuss the issues I have to decide in this  
22 case, having discussed the testimony. The issues, of course,  
23 before me are whether or not the Respondent violated Section  
24 91.123(a) and 91.13(a) of the Federal Aviation Regulations. In  
25 making that decision I must weigh the evidence presented by the

1 Administrator and by the Respondent in their respective cases. On  
2 one side of the scale I weigh the evidence and arguments of the  
3 Administrator and the testimony of his witnesses. On the other  
4 side of the scale I weigh the evidence and arguments of the  
5 Respondent and the testimony of Mr. Wilcox.

6           The Administrator bears the burden of proving by a  
7 preponderance of the evidence that the Respondent violated the  
8 cited sections of the Federal Aviation Regulations.

9           The Administrator presented the testimony of  
10 Mr. LaCroix, again, who testified he was not required to issue  
11 hold short instructions to the Respondent because his instruction  
12 as ground controller to Respondent was to taxi to Runway 13. He  
13 testified credibly that he must issue a hold short order only  
14 where a pilot is going to cross a runway. He testified that the  
15 Respondent was to taxi to the hold short line at Runway 13 as  
16 Respondent himself stated when he read back the instruction.

17           He testified that when Respondent crossed the hold short  
18 line he deviated from his, Mr. LaCroix's instructions as the  
19 ground control air traffic controller, in this case. I found his  
20 testimony to be credible both on direct and cross-examination.

21           Mr. Page, as I stated, testified he was the local  
22 controller on April 15th, 2012. As a local controller he has  
23 control over the runways and airspace 3 miles around the airport  
24 and up to an altitude of 2,000 feet. He testified that ground  
25 control cannot direct an aircraft onto or across a runway without

1 first asking for, and he must provide, authorization to do so.

2 He testified on April 15, 2013, Respondent initially  
3 contacted the tower by mistake. He instructed him to contact  
4 ground control. Mr. Page testified that he was in the process of  
5 clearing a Twin Engine Cessna for takeoff on Runway 13 when he saw  
6 Respondent crossing the hold short bars and was headed towards the  
7 runway. He testified he contacted the Twin Engine Cessna,  
8 cancelled the takeoff clearance. He further testified he then  
9 gave ground control clearance to get Respondent off the runway by  
10 crossing Runway 13.

11 Mr. Page then testified he ordered the Twin Cessna to  
12 hold its position and cancelled the takeoff clearance. He  
13 testified he did so because the Respondent was pulling onto the  
14 runway and he testified the Respondent was in the safety area when  
15 he crossed the hold short line or bars and was approaching Runway  
16 13.

17 Mr. Page was directed to R-5, PCG R-6 and was asked  
18 about the meaning of RSA and he testified the initials stood for  
19 runway safety area. He testified that the definition was probably  
20 on the next page, which Respondent's counsel again had not  
21 included in his excerpts of the exhibit. Respondent subsequently  
22 provided what he purported to be the definition of RSA, which was  
23 admitted into evidence again as R-6. Mr. Page read the definition  
24 and testified that the definition included the safety areas about  
25 which he had just testified. He testified that the Respondent's

1 aircraft had passed the hold short line and had taxied into the  
2 safety area.

3 He testified that he has control of the runways and the  
4 airspace around the airport and he also testified he has control  
5 as a local controller of the runway safety areas. Again, I found  
6 him to be credible on both direct and cross-examination and I  
7 found him to be a very experienced air traffic controller.

8 Mr. Del Negri testified he is an ATC manager. He  
9 testified that one of his duties was to conduct training for ATC  
10 controllers and he testified he has to know the procedures in  
11 order to perform the training.

12 He testified that when an aircraft requests ground  
13 control clearance, ground control must determine the aircraft's  
14 position on the field and make a positive identification. Ground  
15 control then provides a specific route to the runway and clears  
16 the aircraft to a departure point, such as departure to Runway 8  
17 or Runway 13.

18 He testified that the departure point was the hold short  
19 bars before the runway. He testified the departure point was not  
20 past the hold short bars or onto the runway. He testified ground  
21 control clearance was limited and that clearance ends at the hold  
22 short line of a runway.

23 Mr. Del Negri testified that a pilot has to obtain  
24 clearance to enter onto the runway from a local controller.  
25 Ground control cannot provide such a clearance.

1           Mr. Del Negri was directed to read R-5, 3-7-b and  
2 testified that the hold short order was not required when ground  
3 control only provided clearance to the runway. For example, taxi  
4 to Runway 13 did not require a hold short order because the  
5 clearance from ground control is only to the hold short line of  
6 Runway 13. He testified a hold short order is only necessary,  
7 again, when the pilot and his aircraft are going to cross another  
8 runway.

9           When asked about the definition of a safety area, he  
10 read the definition on Exhibit R-6 and testified it applied to the  
11 area beyond the hold short bars and before the runway.

12           In response to my question, he testified that the edge  
13 of the runway is identified by runway markings. He testified that  
14 the area beyond the hold short line and to the edge of the runway  
15 markings was a safety area. I found this witness to be very  
16 credible and, as I said, very knowledgeable.

17           The testimony of these three witnesses are consistent.  
18 A specific hold short instruction is not necessary. They all  
19 testified generally that a hold short instruction is not necessary  
20 from ground control unless the aircraft is going to cross a  
21 runway.

22           Taxi instructions from ground control is a clearance  
23 only to the point of departure. The point of departure is the  
24 hold short line of the assigned runway. Ground control does not  
25 have the authority to instruct an aircraft to taxi onto a runway

1 or across a runway without first obtaining clearance from the  
2 local controller.

3 The local controller controls the runways and the  
4 airspace 3 miles around the airport to an altitude of 2,000 feet.  
5 Only the local controller has the authority to direct an aircraft  
6 onto the runway or across a runway.

7 All of these witnesses -- Mr. LaCroix, Mr. Page, and  
8 Mr. Del Negri -- testified credibly. They testified generally  
9 just that the area just past the hold short line and the edge of  
10 the runway is a safety area. I'm sorry, that testimony was from  
11 Mr. Page and Mr. Del Negri. They testified that the area is not a  
12 taxiway and it's not an area where an aircraft can wait to take  
13 the runway for takeoff. All three of the witnesses testified that  
14 when Respondent crossed the hold short line of Runway 13, that  
15 constituted a deviation from the air traffic controller's  
16 instructions.

17 Aviation Inspector Cardenas testified that based on his  
18 investigation his conclusions were that the Respondent had indeed  
19 violated the cited sections of the Federal Aviation Regulations.  
20 He further testified relative to the sanctions guidelines and what  
21 matters can be considered in determining the appropriate sanction.

22 I found the testimony of all the Administrator's  
23 witnesses to be credible and convincing both on direct and cross-  
24 examination.

25 On the other side of the scale, as I indicated, is the



1 Respondent's case. Respondent's counsel argues that there is no  
2 definition for the words "hold short line" or "hold short bars" in  
3 the Federal Aviation Regulations or in Order JO 7110.65U. Because  
4 there is no such definition his client could not have violated any  
5 regulation as he was not required to stop at the hold short line  
6 at Runway 13 at Alpha.

7           Thus, while the Respondent admits to have crossed the  
8 hold short line at Runway 13 contrary to ground control  
9 instructions, Respondent maintains that does not constitute a  
10 violation because the underlying act of crossing the hold short  
11 line is not defined in the Federal Aviation Regulations or JO  
12 7110.65U, and thus cannot be a violation.

13           He further argues that the definition of runway in Order  
14 JO 7110.65U does not mention the hold short line and only refers  
15 to a rectangular area on a land airport prepared for the landing  
16 and takeoff run of an aircraft along its length. Therefore, the  
17 Respondent did not enter the runway when he crossed the hold short  
18 because the area beyond the hold short line is not part of the  
19 runway, but simply a taxiway. Thus, the Respondent could have  
20 taxied up to the runway markings of Runway 13 contrary to ground  
21 control's instructions and not committed a violation.

22           As to these legal arguments, the Respondent offers no  
23 case law or precedent to support this legal theory. The case law  
24 he cites and provides copies of in his prehearing memorandum do  
25 not support his theory at trial, nor does he argue that the cases

1 he provided specifically support him.

2 Respondent only provided very limited excerpts from  
3 Order JO 7110.65U, which he described as the air traffic  
4 controller's bible to support his theory. Those excerpts were  
5 only disclosed to the Administrator during the cross-examination  
6 of his first witness, Mr. LaCroix.

7 Respondent had to later supplement those excerpts in an  
8 attempt to discredit the testimony of Air Traffic Controller Page  
9 regarding the definition of the term "runway safety area." The  
10 supplementation was very relevant and led to Mr. Page and Mr. Del  
11 Negri's credible testimony that runway safety area or safety area  
12 included the space beyond the hold short line at Runway 13 and the  
13 edge of the runway markings for Runway 13.

14 Thus, even the limited excerpts from Order JO 7110.65U  
15 do not prove Respondent's legal theory. I cannot give those  
16 limited excerpts the full weight they deserve as the complete  
17 document was not admitted into evidence in this case, but again I  
18 find even these limited excerpts do not prove the Respondent's  
19 legal theory.

20 As to the witness testimony in this case, as the sole  
21 witness counsel presented to prove his legal theory or the factual  
22 aspects of his legal theory was the testimony of the Respondent  
23 himself. When the Respondent was asked by his lawyer if he had  
24 been instructed by ground control to hold short of Runway 13, he  
25 testified, "I don't recall."

1           When reminded by his lawyer that the transcript of the  
2     recording indicated that he had not been specifically told to hold  
3     short, he then remembered under oath that he was not told by  
4     ground control to hold short of Runway 13.

5           When I asked him where he understood he was to hold  
6     short during this event, Respondent testified that he could not  
7     recall where he was to hold short. When asked why he read back  
8     the taxi instructions to include a hold short of Runway 13, he  
9     testified that is what we as pilots usually do.

10          The Respondent testified that he did taxi past the hold  
11     short line at Runway 13 at Alpha. He testified that he passed the  
12     hold short line and again, I quote, "maybe a little bit." He also  
13     testified that he was about to ask and stop for a clarification as  
14     to where he was to hold short when he was ordered to stop by Mr.  
15     LaCroix from ground control. However, contrary to that testimony,  
16     he also testified he was looking for the hold short line, but  
17     could not find it because of the rearward center of gravity of his  
18     aircraft.

19          Finally, he testified that he simply used his own  
20     definition of where to hold short. He did not articulate what  
21     that definition was or where his training as an ATP, commercial  
22     pilot, private pilot with an instrument rating, he was told he  
23     could simply use his own definition as to where to hold short of  
24     the runway.

25          I did not find Respondent's testimony to be credible nor

1 did I find that it supported his counsel's overall legal theory in  
2 the case. His answers to my questions were evasive and his  
3 answers to questions were inconsistent with the answers to  
4 questions he was previously provided. He also testified that the  
5 Airman's Information Manual does require the pilot to stop at the  
6 hold short line at a runway.

7           The Respondent argued in his closing argument that the  
8 Administrator's case should be dismissed because the Respondent  
9 was not informed of his rights under the Pilot's Bill of Rights  
10 when he called the air traffic control tower relative to the  
11 events of April 15, 2013.

12           The Administrator argued in his rebuttal that the  
13 Pilot's Bill of Rights does not require air traffic control to  
14 inform the Respondent of his rights under the Pilot's Bill of  
15 Rights. It is not, according to the Administrator, air traffic  
16 control tower that investigates alleged violations; it is the FAA  
17 that investigates and take certificate actions.

18           Respondent provides no authority to support the  
19 assertion that air traffic control should have provided the  
20 Respondent his rights under the Pilot's Bill of Rights. Further,  
21 while the Respondent argues that the Administrator bears the  
22 burden of proving compliance with the requirements of the Pilot's  
23 Bill of Rights, he again provides no support in the law,  
24 legislative history, or case precedent which establishes his  
25 arguments by a preponderance of the evidence.

1           Respondent also argued that the Pilot's Bill of Rights  
2 provides that the Administrator may not proceed against an  
3 individual that is the subject of an investigation described in  
4 paragraph 1 of the Pilot's Bill of Rights at the applicable  
5 section during the 30-day period beginning on the date on which  
6 the air traffic data required under paragraph 4 is made available.

7           Respondent argued that he was provided the EIR, which is  
8 the enforcement investigative report and the air traffic control  
9 data on August 27th and the Notice of Proposed Certificate Action  
10 was issued on the same day. Respondent provides no evidence other  
11 than his assertion that the Notice of Proposed Certificate Action  
12 constitutes an action against the Respondent as contemplated by  
13 the Pilot's Bill of Rights.

14           The Administrator argues on the other hand that the  
15 proposed certificate action is not a formal certificate action and  
16 the Administrator has not proceeded against an individual until an  
17 Order of Suspension has been issued. In this case the FAA argues  
18 that they did not proceed against the Respondent until the Order  
19 of Suspension dated December 23rd, 2013 was issued.

20           I find the Administrator's arguments to be more  
21 compelling. No formal action was taken against the Respondent  
22 until the Order of Suspension in this case was issued on December  
23 23rd, 2013, which was more than 30 days after the date the EIR and  
24 the air traffic data was provided to the Respondent. Thus, I  
25 cannot find that the Respondent has established a basis upon which

1 I can dismiss the Administrator's case under the provisions of the  
2 Pilot's Bill of Rights.

3 In conclusion, after weighing all of the evidence in  
4 this case, I must find that the Administrator's proven by a  
5 preponderance of the evidence that the Respondent violated Section  
6 91.132(a), which reads that when a clearance has been obtained, no  
7 pilot in command may deviate from that clearance unless an amended  
8 clearance is obtained, an emergency exists, or a deviation is in  
9 response to a traffic alert and collision avoidance system  
10 resolution advisory. There has been no argument set forth in this  
11 hearing that any of these exceptions apply to the Respondent in  
12 this situation.

13 Administrator also alleges or argues that the violation  
14 of Section 91.13(a) is a derivative of the operational violation  
15 of 91.123(a) or is a residual violation of the operational  
16 violation of 91.123(a). The Administrator further argues that  
17 case law supports a finding that in proving an operational  
18 violation the Administrator has also proven the residual violation  
19 of 91.13(a), and the Administrator has cited the cases that  
20 supports that proposition.

21 Respondents provided no argument to the contrary. Thus,  
22 I find that based on the facts, I find that the Administrator has  
23 proven the operational violation of 91.123(a) and by that same  
24 proof he has also proven the violation of 91.13(a).

25 I further find that based upon all of the evidence

1 before me, I find that the Respondent has not proven his legal or  
2 factual arguments by a preponderance of the evidence.

3 Having made these findings, I now make specific findings  
4 in facts and conclusions of law and in doing so I use the  
5 Administrator's complaint.

6 In looking at the Administrator's complaint, as I  
7 indicated at the beginning of this decision, as to allegation 1,  
8 2, 3, and 4, the Respondent admitted those allegations and,  
9 therefore, they are considered to have been established for this  
10 case.

11 As to allegation 5, at all times relevant herein Runway  
12 13 was an active runway, Respondent denied that allegation for  
13 lack of knowledge. There was testimony by Mr. Page that Runway 13  
14 was an active runway and was always an active runway. Thus, I  
15 find the Administrator's proven the allegations as to allegation  
16 Number 5 by a preponderance of the evidence.

17 As to paragraph 6, the Respondent denied paragraph 6,  
18 that ATC did not clear or instruct Aircraft N530-Sierra-Alpha to  
19 cross or enter Runway 13. I find that the Administrator has  
20 proven that allegation by a preponderance of the evidence through  
21 the witnesses that he has provided in this hearing.

22 As to paragraph 7, the Respondent admitted paragraph 7,  
23 that he crossed the hold short bars for Runway 13 without  
24 clearance to do so.

25 As to Paragraph 8, the Respondent denied that at the

1 time you crossed the hold short bars another aircraft was present  
2 on Runway 13. I find that the Administrator has not proven  
3 paragraph 8, that another aircraft was present on Runway 13.

4 The testimony was that the Twin Engine Cessna had --  
5 that the air traffic controller was in the process of giving the  
6 Twin Engine Cessna clearance to take off and that clearance was  
7 understood to have been given by the Twin Engine Cessna. However,  
8 there was no evidence that the Cessna Twin actually was on the  
9 runway as is alleged on paragraph 8.

10 As to paragraph 9, the Respondent denied that his  
11 failure to hold short at Runway 13 caused an ATC to cancel the  
12 takeoff clearance of another aircraft departing Runway 13. I find  
13 that the Administrator has proven that allegation by a  
14 preponderance of the evidence.

15 The testimony of Mr. Page clearly establishes that he  
16 had to cancel the takeoff clearance of another aircraft that he  
17 was in the process of providing aircraft clearance. The  
18 transcript of the air traffic recording indicates the pilot of the  
19 Twin Engine Cessna understood he had clearance to take off and he  
20 understood that he had to cancel that takeoff clearance. So I  
21 find the Administrator has proven the allegations in paragraph 9  
22 by a preponderance of the evidence.

23 As to paragraph 10, your operation of N530-Sierra-Alpha  
24 beyond the hold short line when you were not clear or instructed  
25 to do so endangered the life or property of another, this is



1 relative to Section 91.13(a), which as I've indicated is a  
2 residual allegation, which is proven by the Administrator proving  
3 the operational violation of Section 91.123(a). Thus, by proving  
4 Section 91.123(a) violation, the Administrator has proven a  
5 violation of 91.13(a).

6           Having found the Administrator has proven all of the  
7 allegations in the Administrator's complaint except for allegation  
8 8 by a preponderance of reliable, probative, and credible  
9 evidence, I now turn to the sanction imposed by the Administrator  
10 in this case.

11           On August 3rd, 2011, Public Law 112-153 known as the  
12 Pilot's Bill of Rights was signed into law by the President of the  
13 United States. The law applies to all cases before the National  
14 Transportation Safety Board involving reviews of actions of the  
15 Administrator of the Federal Aviation Administration to deny  
16 airman medical certificates under 49 USC Section 44703, or remand,  
17 modify, suspend, revoke airman's certificates under 49 USC Section  
18 44709. The law became effective immediately upon its enactment.

19           The Pilot's Bill of Rights specifically strikes from 49  
20 USC Section 44703 language that provides that in cases involving  
21 airman certificate denials, the Board is bound by all validly  
22 adopted interpretations of law and regulations the Administrator  
23 carries out unless the Board finds an interpretation is arbitrary,  
24 capricious, or otherwise not in accord with the law.

25           The Pilot's Bill of Rights also strikes from 49 USC

1 Section 44709 and 44710 language in cases involving amendments,  
2 modifications, suspensions, revocation of airman certificates, the  
3 Board is bound by all validly adopted interpretations of law and  
4 regulations the Administrator carries out and of written agency  
5 policy available to the public relating to sanctions to be imposed  
6 under this section unless the Board finds that an interpretation  
7 is arbitrary, capricious, or otherwise not in accordance with the  
8 law.

9           While I am no longer bound to give the Federal Aviation  
10 Administration deference by statute, that Agency is entitled to  
11 the judicial deference due all other federal administrative  
12 agencies under the Supreme Court decision in Martin vs.  
13 Occupational Safety & Health Review Commission, et al., 499 U.S.  
14 144; 111 S.Ct. 1171.

15           In applying the principles of judicial deference to the  
16 interpretations of laws, regulations, and policies that the  
17 Administrator carries out I must analyze and weigh the facts and  
18 circumstances in each case to determine if the sanction selected  
19 by the Administrator is appropriate.

20           In the case before me, the Administrator has argued  
21 that, again, it is due the same deference that is due all other  
22 federal administrative agencies under the case of Martin vs.  
23 OSHRC, as it's referred to, which I've cited. The Administrator  
24 argues that I consider the Respondent's level of experience in  
25 determining the appropriate sanction in this case. The

1 Administrator argues that the Respondent has an ATP certificate,  
2 he is a commercial pilot and thus he should be held to a higher  
3 standard. The Administrator argues that failure to meet the  
4 higher standard should serve as an aggravating factor.

5           The Administrator also argues that I should also  
6 consider the Respondent's violation history as an aggravating  
7 factor as well in this case. The Administrator has amended the  
8 complaints in this case to identify Respondent's previous  
9 violation of the Federal Aviation Regulations and previous  
10 suspensions of his certificates.

11           Respondent admits to those violations and as a finding  
12 of fact and conclusion of law, I find that he has admitted to  
13 those violations cited in the amended Administrator's complaint as  
14 allegations 11 and 12. The Administrator argues that the  
15 violation history demonstrates a poor compliance attitude on the  
16 part of the Respondent.

17           Respondent, on the other hand, argues that because the  
18 instructions from ground control in this case were confusing, the  
19 ground control is partially at fault for the Respondent's  
20 violation. Further, the Respondent argued that the violations  
21 were not deliberate and inadvertent and, therefore, any period of  
22 suspension should be reduced to less than 30 days.

23           I find the Administrator's arguments to be supported by  
24 the record in this case and thus more persuasive. Respondent is  
25 an experienced ATP certificated pilot. He holds a commercial

1 pilot's certificate, private pilot's certificate and an instrument  
2 rating. He has a significant number of hours of flight time.  
3 Despite the Respondent's argument to the contrary, he should be  
4 held to a higher standard.

5           The Respondent argues that he was not acting as an ATP  
6 pilot during the pleasure flight of April 15, 2013 and was not  
7 wearing his ATP pilot's hat, so to speak and, therefore, it should  
8 not be an aggravating factor, but it should be a mitigating  
9 factor.

10           Respondent's history of prior violations and suspensions  
11 of his certificate is undisputed. I am persuaded by the argument  
12 that these past violations demonstrate a poor compliance  
13 disposition or attitude on the part of the Respondent. I find  
14 this argument is bolstered by the fact that the Respondent  
15 testified in this case that he essentially made up and applied his  
16 own definition as to where he should hold short of Runway 13. I  
17 did not find the Respondent's arguments to be persuasive. The air  
18 traffic controllers have not been shown to be to blame in this  
19 matter for Respondent's violations.

20           Respondent's legal and factual arguments made as to the  
21 merits of this case do not demonstrate or even suggest, except for  
22 the purpose of sanctions, that the conduct was inadvertent or not  
23 deliberate. Thus, in weighing the evidence and the arguments in  
24 this case, I find that the sanction of suspension of Respondent's  
25 airman certificate for a period of 90 days as sought by the

1 Administrator is appropriate and warranted in the public interest  
2 in air commerce and safety.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 ORDER

2 IT IS ORDERED that the Administrator's Order of  
3 Suspension, the complaint herein, be, and is hereby, affirmed as  
4 issued, except for the violation that's alleged in paragraph 8 of  
5 the complaint.

6 I further find that any and all of the pilot  
7 certificates held by Gregory Wilcox, including his Air Transport  
8 Pilot Certificate Number 002843042 be, and are hereby, suspended  
9 for a period of 90 days.

10 This Order is entered on the 11th day of April 2014 in  
11 Miami, Florida.

12

13

14 EDITED ON

15 MAY 19, 2014

---

ALFONSO J. MONTAÑO,

Chief Administrative Law Judge

16

17

18

19

20

21

22

23

24

25

26

1 APPEAL

2 ADMINISTRATIVE LAW JUDGE MONTAÑO: That completes my  
3 oral initial decision.

4 I have placed, gentlemen, on each of your tables the  
5 appeal rights that you can pursue. Mr. Goldstein is indeed an  
6 experienced aviation lawyer as is -- and the Administrator, I'm  
7 sure, is aware of the appeal rights, but in order for me to ensure  
8 that the parties are aware of the appeal rights, I've issued or  
9 I've handed out those written instructions as to how and when  
10 appeals should be filed.

11 Certainly, if the parties feel that there is a basis for  
12 the appeal, I would urge them to make that appeal. Certainly, I  
13 am not -- I do not consider myself to be infallible, and that's  
14 the beauty of the system, that under the American judicial system,  
15 of which the administrative process is a part of, is that there's  
16 appeal rights.

17 And those appeal rights, as I said, have been provided.  
18 The appeal would be made to the full Board who will either --  
19 which will, based on the review of written briefs and perhaps oral  
20 arguments, if necessary, will decide whether to affirm my  
21 decision, reverse my decision, or remand the decision for further  
22 action.

23 In any event, those are the appeal rights that have been  
24 provided to both parties. For the record, I have handed back to  
25 the -- I put on the Administrator's desk Exhibit 11, which is the

1   airman's file.  I want to give that back to the FAA to make sure  
2   that you have that back and I don't have that in my possession, as  
3   it does contain personal information.  So if you'll take that back  
4   with you?

5               The exhibit is part of the record and it will be  
6   transported through the court reporter's office to our office in  
7   the event of an appeal.

8               Thank you all very much for your patience.  I know it  
9   was a long decision.  I appreciate that.  We will then go off the  
10  record and I wish everyone well and a safe trip home.

11              (Whereupon, at 10:45 a.m., the hearing in the above-  
12  entitled matter was concluded.)

13

14

15

16

17

18

19

20

21

22

23

24

25



CERTIFICATE

This is to certify that the attached proceeding before the:

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Gregory Wilcox

DOCKET NUMBER: SE-19598

PLACE: Miami, Florida

DATE: April 11, 2014

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

---

Edna Hollander  
Official Reporter